

Transferring a medical practice: legal obligations for incoming and outgoing physicians



When a physician retires or moves on from a practice for whatever reason, he or she will often find a replacement physician to take over the practice. In such situations, it is important that both physicians engage in discussion about a number of aspects of the practice prior to the final handover.

Employees

The first consideration is what will happen to the existing employees? Do these employees have contracts?

Both the incoming and outgoing physicians should be aware of potential legal obligations to employees. For example, unless the leaving physician formally terminates the employment of his or her employees, under Ontario law the new physician assumes their employment. This can have financial ramifications for the new physician if he or she wishes later on to terminate their employment.

Both physicians should address these issues, and both should obtain legal advice prior to formally transferring the practice, particularly if the incoming physician wishes to rehire or retain the employees.

Patients

The second consideration is what will happen to patients' medical records?

Patients must be given ample notice that the current physician is leaving, and informed that the new physician will be taking over the practice.

We suggest giving patients as much time as possible so that they may decide if they wish to find, and have their records transferred to, a new physician. In this situation, a reasonable notice period is approximately two months. The College of Physicians and Surgeons of Ontario (CPSO) notes that it is acceptable to provide such notice in person, at scheduled appointments, by sending a letter to patients, or placing a telephone call to the patient; supplemental notice can be provided via a notice posted in the office, a newspaper ad, or recorded voice mail message.¹

Once the leaving physician has properly informed patients that the new physician is assuming the practice, the two physicians should sign a Record Transfer and Access Agreement. This formally transfers the legal custodianship of the records from the leaving physician to the new physician so that the new physician may access patients' personal health

information. Further, it provides access to the records to the leaving physician in the event of a medical-legal matter, and guarantees that the new physician will maintain custody of the records for the appropriate timelines, as required by the Medicine Act² and the CPSO.³

As part of their Record Transfer and Access Agreement, the physicians should also decide on record storage of deceased patients and patients who no longer attend the practice, as well as paper records when the contents have been uploaded to an Electronic Medical Record system. OMA Legal Services can assist members with drafting a Record Transfer and Access Agreement.

Leases And Other Considerations

A third matter to consider when taking over a practice includes ending or transferring the lease and any other contracts, such as those with other physicians, telecommunications companies or Internet providers, or waste disposal companies. Will the new physician assume these contracts, or will the current physician end the agreements? Has the landlord been consulted and informed of the plan?

Further, if the leaving physician is part of a group practice or primary care model, have the other physicians been apprised of the situation and consented to the admission of the new physician? These issues should all be addressed during the process of transferring a practice.

Finally, the physicians may wish to enter into a purchase and sale agreement for the practice for computer equipment, furniture, and other assets of the practice that may have value. If the physicians plan to sign such an agreement, they should each consult with a lawyer to ensure they have obtained independent legal advice.

For more information on transferring a medical practice, or other practice-related legal matters, please email OMA Legal Services at legal.affairs@oma.org, or phone 1.800.268.7215/416.599.2580, ext. 3997.

OMA Practice Management & Education (PME) resources aim to help physicians maintain a successful medical practice, including skills development, usable tools, and medical billing support. Additional resources on these and other topics are available at www.oma.org.

This article was written by Jennifer Gold, LLB and Adam Farber, LLB, OMA's Legal Counsels, and originally published in the December 2016 issue of the Ontario Medical Review.

¹College of Physicians and Surgeons of Ontario. *Practice management considerations for physicians who cease to practise, take an extended leave of absence or close their practice due to relocation.* [CPSO Policy #2-07]. Toronto, ON: College of Physicians and Surgeons of Ontario; 2007 Sep. Available at: http://www.cpso.on.ca/CPSO/media/uploadedfiles/policies/policies/policyitems/cease_nov07.pdf?ext=.pdf. Accessed: 2016 Dec 5.

²Section 19, Reg. 114/94, under the Medicine Act.

³College of Physicians and Surgeons of Ontario. *Medical records.* [CPOS Policy #4-12]. Toronto, ON: College of Physicians and Surgeons of Ontario; 2012 May. Available at: http://www.cpso.on.ca/CPSO/media/uploadedfiles/policies/policies/policyitems/medical_records.pdf?ext=.pdf. Accessed: 2016 Dec 5.



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